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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: D. Darst

Serial No.: 10/672,239
Conf. No.: 8709

Customer
No.: 33123

Filed: September 25, 2003

For: **PILL BOX AND SPLITTER WITH BLADE GUARD**

Art Unit: 3724

Examiner: O. Sanchez

CERTIFICATE OF MAILING PURSUANT TO 37 CFR 1.8

I hereby certify that this correspondence and the attached papers are being deposited with the United States Postal Service with sufficient postage as first class mail on the date indicated below in an envelope addressed to:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

11/23/05
Date

Melissa Mabud,
Signature

PETITION TO MAKE SPECIAL BECAUSE OF ACTUAL INFRINGEMENT (37 C.F.R. § 1.102 and M.P.E.P. § 708.02)

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

11/25/2005 HTECKLU1 00000021 10672239
01 FC:1464 130.00 OP

Sir:

Applicant hereby petitions to make this application Special under 37 C.F.R. § 1.102 because of actual infringement.

Accompanying this Petition are the following documents:

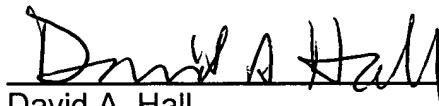
- (a) Statement in Support of Petition to Make Special Because of Actual Infringement;
- (b) Fee under 37 C.F.R. § 1.17(h) of \$130.00 for filing the petition;
- (c) Information Disclosure Statement, with Form PTO/SB/08A and copies of cited references; and
- (d) Second Preliminary Amendment.

D. Darst.
Petition to Make Special
Application No. 10/672,239

Any fees that may be due in connection with the filing of this paper, or during the entire pendency of this application, may be charged to Deposit Account No. 50-1213.

Respectfully submitted,
Heller Ehrman LLP

By:



David A. Hall
Registration No. 32,233

Attorney Docket No.: 40070-0360

Address all correspondence to:
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4350 La Jolla Village Drive, 7th Floor
San Diego, California 92122-1246
Telephone: (858) 450-8400
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SD 774957 v1
(40070.0360)



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: D. Darst

Serial No.: 10/672,239
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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

11/23/05
Date

Mohalle Molenda
Signature

STATEMENT IN SUPPORT OF PETITION TO MAKE SPECIAL BECAUSE OF ACTUAL INFRINGEMENT (M.P.E.P. § 708.02)

Commissioner for Patents
Mail Stop Petition
PO Box 1450
Alexandria, VA 22313-1450

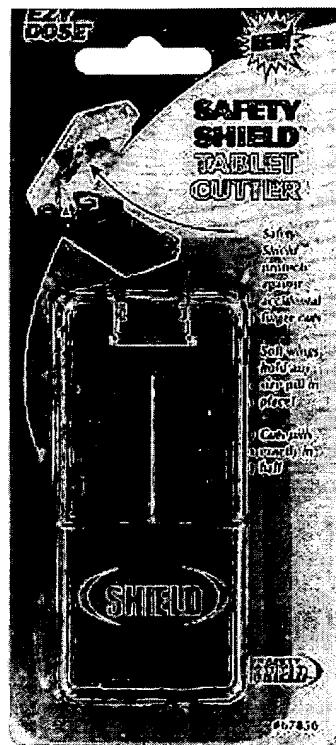
I, David Hall (Registration No. 32,233), am applicant's registered representative in this case. I make the following statements in support of the accompanying Petition to Make Special:

1. I am informed, believe, and allege based thereon, that there is an infringing device or product actually on the market, or a method in use. In particular, a pill splitter product known as the "Safety Shield" tablet cutter is on sale and available from Apothecary Products, Inc. of 11750 12th Avenue South, Burnsville , MN 55337-1295 (stock no. 67856).

2. The "Safety Shield" tablet cutter is illustrated at the Web site of Apothecary Products as follows:

D. Darst.

*Statement in Support of Petition to Make Special
Application No. 10/672,239*



The Web site of Apothecary Products provides the following description of the illustrated "Safety Shield" product:

The unique design of this new tablet cutter provides a clean-cut tablet without the danger of cutting fingers. When closed, a super sharp stainless steel blade cuts tablets exactly in half for easier swallowing. When the cutter is opened, the unique Safety-Shield™ moves into place to completely cover the sharp blade so fingers cannot come into contact with it. The innovative design also features flexible "wings" that hold even the largest tablet for an even cut. Convenient dispensing tray captures both tablet halves for easy retrieval.

The URL of the illustrated product is:

www.apothecaryproducts.com/catalogue/product.asp?CatID=175&ProdID=67856#

D. Darst.

*Statement in Support of Petition to Make Special
Application No. 10/672,239*

The above-referenced Web page was available at least as from the date of this Petition.

3. A rigid comparison of the alleged infringing "Safety Shield" product with the claims in this application has been made and, in my opinion, some of the application claims are unquestionably infringed. In particular, in my opinion, claims 1, 62, 73, and 78 are unquestionably infringed.

4. I have made or caused to be made a careful and thorough search of the pertinent prior art. All such pertinent prior art is provided to the Examiner in an accompanying Information Disclosure Statement with copies of the references.

Any fees that may be due in connection with the filing of this paper, or during the entire pendency of this application, may be charged to Deposit Account No. 50-1213.

Respectfully submitted,
Heller Ehrman LLP

By:



David A. Hall
Registration No. 32,233

Attorney Docket No.: 40070-0360

Address all correspondence to:

David A. Hall

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SD 774962 v1 (40070.0360)